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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,744	03/30/2000	Edward Jason White	KCC-14,867	8894

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EXAMINER

GUARIELLO, JOHN J

ART UNIT	PAPER NUMBER
1771	8

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF8

<b>Office Action Summary</b>	Application No. 09/538744	Applicant(s) White et al.
	Examiner John Guarriello	Group Art Unit 1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on 8/3/2001.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-14, 29-42 is/are pending in the application.

Of the above claim(s) 29-38 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-14, 39-42 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4156  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

**Office Action Summary**

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## **DETAILED ACTION**

### ***Election/Restriction***

15. Restriction to one of the following inventions is required under

35 U.S.C. 121:

- I. Claims 1-14, 39-42, drawn to material of a non-woven web ,  
classified in class 442, subclass 327.
- II. Claims 29-38, drawn to Method of making the material, classified  
in class 264, subclass 174.11.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the

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product as claimed can be made by another and materially different process with an extra step which may have an adhesive bonding step rather than a heating step.

18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. During a telephone conversation with Roland Norris on 12/7/2001 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-14, 39-42. Affirmation of this election must be made by applicant in replying to this Office action. Claims 29-38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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***Claim Rejections - 35 USC § 112***

20. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

21. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 1, it is not clear what “lofty” refers in claim 1 since the term “lofty” does not appear in claim 1. This is a lack of clear antecedent basis.

***Claim Rejections - 35 USC § 102***

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22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 12, 14, 39, 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Holtman 4,578,070.

Holtman describes an absorbent structure with corrugated web layers, (see abstract). Holtman describes the fibrous layer in the form of a non-woven web which is corrugated in structure, identical to the waves or fibers and identical to a z-direction, x-direction and a y-direction of the claimed invention, (see Figures 2, 3A, and 3, column 2, lines 35-48). Holtman describes absorbent products like diapers, sanitary napkins, (column 3, lines 58-66; column 5, lines 50-53), and incontinent pads, (column 4, lines 40-43; Figure 3). Holtman describes a fibrous web with high loft, (column 5, lines

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15-17). Holtman describes filter properties, (column 4, lines 43-56).

Holtman describes the essential limitations of the claimed invention. Claims lack novelty.

***Claim Rejections - 35 USC § 103***

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claims 6-11, 13, 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtman 4, 578,070.

Holtman is relied upon as above except it is silent about the waves being randomly spaced in the machine direction.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the non-woven web fibrous layer orientation with the second fibrous layer of Holtman so as to exemplify the waves in the machine direction which are similar to an elliptical shape, see Figure 3A, elements 32A and 34A of Holtman, of the claimed invention being motivated with the expectation that the rearranging the parts (like the layers of the fibrous materials in spatial relationship to each other) of an invention only involves routine skill in the absorbent article art in order to achieve properties of improved absorbence, see *In re Japikse*, 86 USPQ 70.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
John J. Guarriello:gj  
Patent Examiner

April 21, 2002

April 22, 2002

**DANIEL ZIRKER**  
**PRIMARY EXAMINER**  
**GROUP 1900**  
**1700**

